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Human Rights Committee

Concluding observations on the third periodic report of Lithuania

Addendum

Information received from Lithuania on follow-up to the concluding observations*

[Date received: 24 July 2014]

1. The Human Rights Committee, at its 110th session, held in March 2014, analysed the additional information provided by Lithuania according to the item 17 of the final comments of the Human Rights Committee regarding the third periodic report of Lithuania (CCPR/C/LTU/3).

2. Following the analysis of Lithuania's additional information, the Committee, in its letter dated 28 April 2014, requested further information. Presented below is the information requested.

"Paragraph 8. [B2] While the Committee welcomed the adoption of the Inter-institutional Action Plan for the promotion of Non-discrimination 2012-2014, it considered it necessary to request further information on:

(a) Specific measures taken to ensure that national legislation is not interpreted and applied in a discriminatory manner against persons on the basis of their sexual orientation or gender identity;"

3. The legislation of Lithuania ensures equal opportunities and equality for all persons: appropriate provisions are provided in the Constitution, the Criminal Code, the Labour Code, the Law on Equal Opportunities and other legal acts. There is also a network of institutions responsible for the protection of the rights of lesbian, gay, bisexual and transgender (LGBT) persons, such as courts and the Equal Opportunities Ombudsman's Office.

4. To ensure respect for human rights and compliance with the principle of non-discrimination in the legislative process, a mechanism of control is established in the

* The present document is being issued without formal editing.

legislation of Lithuania. According to the legislation of Lithuania, all legal acts must comply with the Constitution as well as other legal acts that are in force, unless the legal act contains norms amending the legal acts that are in force. Also, there is a requirement that in the process of drafting the concept of a law related to human rights, analysis of the compliance of the major provisions thereof with the Constitution as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms must be carried out.

5. On 1 January 2014, the amendment to the Law on the Fundamentals of Legislation came into force, whereby institutions authorized by the Government shall issue conclusions on the compliance of draft legal acts with (apart from other sources) the European Convention for the Protection of Human Rights and Fundamental Freedoms, judgements of the European Court of Human Rights, and international agreements of Lithuania, including the United Nations conventions, to which Lithuania is a party. The conclusions shall also be submitted to the institution responsible for the adoption of the legal act.

"(b) Specific trainings carried out to counter negative sentiments against LGBT individuals and its frequency;"

6. Various trainings are carried out aimed at promoting tolerance and decreasing negative manifestations based on all forms of discrimination, including against LGBT persons:

1. In the second quarter of 2012, a 12-hour academic seminar was held for judges and prosecutors on the legal and social aspects of anti-discrimination. The training was attended by 37 judges and 15 prosecutors.

On 13 to 15 May 2013, training was held under a professional development programme for judges "European Union Law and Procedure", where one of the topics was an overview of the case law of the European Court of Human Rights, and the influence of the international human rights legislation on the interpretation and application of European Union legislation. The training was attended by 37 judges.

On 31 May 2013, a workshop on the trends in the implementation of the European Convention on Human Rights in the context of the case law of the European Court of Human Rights and the courts of Lithuania was held. It was attended by 109 persons (judges, legal assistants, and other judicial staff).

2. In 2012, the Lithuanian Police School held a training workshop on the promotion of non-discrimination and the implementation of the equal opportunities policy, which was attended by 26 police officers. In 2010, the Lithuanian Police School held 9 training workshops on communicating with victims, involving 126 police officers. One of the topics of the seminar was possible discriminatory practices in Lithuania (discrimination based on age, disability, sexual orientation, racial or ethnic origin, religion and beliefs).

Also, in order to improve professional qualifications of police staff with knowledge about the fundamental human rights and freedoms, new police training programme "Protection of Human Rights and Freedoms" was prepared in 2014. The courses under this programmed are planned to start in the second half of 2014.

3. In 2012 and 2013 seminars on the theory and practical application of equal opportunities were held for firefighters, staff members of SC "Lietuvos geležinkeliai" (Lithuanian Railways), public security and Ministry of Internal Affairs. A seminar was organized in Klaipeda for the media representatives from west and north regions of Lithuania.

4. The Lithuanian Bar Association held seminars on human rights protection in national law and European Union law; ensuring human rights in criminal proceedings and enforcement; professional ethics for advocates, and human rights, and the various issues relating to the application of the European Convention on Human Rights. The Lithuanian Bar Association organized 18 seminars in 2010, 12 in 2011, 4 in 2012, and 2 in 2013. The seminars were attended by 1,222 advocates and advocate's assistants.

5. In 2012 seminars were organized in several areas of Lithuania (Alytus, Telšiai and Utena). 62 participants attended these seminars held in the form of social-psychological training. In 2013 informal training on Antidiscrimination, Tolerance and Respect for Others for youth in Telšiai, Kedainiai, and Rokiškis. Representatives of youth organizations, staff members of education institutions and youth employment centres, and members of civil society organizations attended the training.

"(c) Awareness-raising campaigns on LGBT issues."

7. Inter-institutional Action Plan for Promotion of Non-discrimination for 2012–2014 is founded mainly on educational measures, inter alia on organization of various events, awareness-raising campaigns aimed at promoting tolerance and decreasing negative manifestations based on all forms of discrimination, including against LGBT persons. The following measures were implemented in this regard:

1. Awareness-raising on equal opportunities and non-discrimination (publications, posters, advertising clips, television and radio shows, training, etc.). Work calendars "The Time has Come for Gender Equality" and "New Day — New Possibilities: Work Calendar for 2014" for the use of civil servants were issued in 2012 and 2013. For wide public a publication "All Truth about Discrimination" was released. Five radio programmes on the theme of equal opportunities were prepared and broadcast on 13 to 20 December 2012. Radio "Pūkas" ether was dedicated to intolerance based on sexual orientation on 19 December 2012.

2. Meetings with Lithuanian municipality communities to discuss equal opportunity topics. Seminars-discussions were organized for the staff members of municipalities in Prienai, Visaginas, Panevėžys, Klaipėda in 2012, and in Utena and Klaipėda in 2013.

3. Open lectures at Lithuanian schools of higher education and public libraries. Educational events were organized for the students in Šiauliai, Panevėžys and Klaipėda. Open lectures for the student communities were organized in Kaunas and Vilnius.

8. In addition, awareness-raising campaigns were conducted under the PROGRESS programme (see below).

"The Committee also request information on measures taken to address the Committee's recommendation in the framework of the PROGRESS programme."

9. In 2012 the Equal Opportunities Ombudsman's Office together with non-governmental organizations, such as the Lithuanian Gay League and Lithuanian Forum of the Disabled, has carried out a project entitled CAFE (Change Attitude for Equality), funded by the European Commission's Programme for Employment and Social Solidarity PROGRESS. During the project, an event week called "Vaivorykštės dienos" (Rainbow Days) took place from 15 to 22 May, 2012. Main events: seminar on the changing face of the LGBT movement in Lithuania, during which a book about Baltic Price 2010 was presented in Vilnius, presentation of documentary movies and discussion, press conference

in Parliament and public action "We are for All Colours of Life". Volunteers from the Lithuanian Gay League have also organized at the LGBT Centre two lessons of openness, during which participants had a possibility to discuss, meet and communicate with people, which are usually discriminated and experiencing social isolation. During this public action a 30-metre rainbow flag was unfolded in Vilnius denoting the importance of solidarity, unity and support. The end of this week was marked by the event "Rainbow Coffee for All" and the performances of famous Lithuanian musicians. These events took place in Vilnius and Kaunas.

10. In 2013 the Equal Opportunities Ombudsman's Office has continued its cooperation with the Lithuanian Gay League and Lithuanian Forum of the Disabled while implementing project "ĮVAIROVĖ.LT" (Diversity.LT) funded by the European Commission's Programme for Employment and Social Solidarity PROGRESS. In commemoration of International Day against Homophobia and Transphobia (IDAHO), project partner the Lithuanian Gay League organized a review of documentary movies and discussion on the benefits and consequences that may arise when LGBT persons live openly in Lithuanian society.

11. According to the data of Omnibus research carried out during PROGRESS project, in comparison with the research of 2007, the number of persons agreeing with the statement that they would be afraid if their children's teacher was be homosexual has decreased from 58 per cent in 2007 to 42 per cent in 2013. The number of persons agreeing with the statement that they would not want to be a member of any organization with gay members has decreased from 61 per cent in 2007 to 37 per cent in 2013. On the other hand, a number of persons agreeing with the statement that homosexual persons could be members of Parliament has not changed significantly (28 per cent in 2007 and 30 per cent in 2013). Half (50 per cent) of respondents were of the opinion that their relationship with neighbours would not change if they found out that there was a gay couple living in the neighbourhood. Also, slightly fewer respondents (46 per cent) would try to stay neutral in case of offensive, contemptuous conversation about homosexual persons.

"Paragraph 9: [C2] The Committee considered that the State party repeated its previous reply and provided no information on the measures taken to implement the Committee's recommendations. The Committee therefore reiterated its recommendation."

12. On 13 September 2013, the Prosecutor General's Office received an application from NGOs (REDRESS and Human Rights Monitoring Institute) to commence a pretrial investigation in relation to the alleged criminal offences committed in Lithuania against Mustafa Ahmed al-Hawasawi, i.e. regarding the involvement of Lithuanian officials and State authorities in the rendition, secret detention, torture, inhuman and degrading treatment of Mustafa Ahmed al-Hawasawi, a citizen of Saudi Arabia, who is kept in detention by the authorities of the United States of America at present.

13. By its decision of 27 September 2013, the Prosecutor General's Office refused to commence the pretrial investigation.

14. The refusal by the Prosecutor General's Office to commence the pretrial investigation was appealed by Human Rights Monitoring Institute, as the applicant, to Vilnius Local Court and subsequently also to Vilnius Regional Court. Vilnius Regional Court partly satisfied the appeal of the applicant by its ruling of 28 January 2014 and rendered a new decision whereby the prosecutor's decision of 27 September 2013 to refuse to open the pretrial investigation was revoked.

15. Upon receipt of this court ruling, the Prosecutor General's Office considered all the information available repeatedly and decided on 13 February 2014 to open the pretrial investigation for the crime elements provided for in paragraph 3 of article 292 of the

Criminal Code, i.e. unlawful transportation of persons across the State border of Lithuania. Currently the pretrial investigation is ongoing.

"Paragraph 12. [C1] Regarding administrative detention, the Committee considered that the recommendation has not yet been implemented. The Committee reiterated it."

16. In this regard, Lithuania would like to draw the Committee's attention that a draft law on Code of Administrative Offences (draft law No. XIP-3600) has been submitted to the parliament and is under the intensive consideration. The draft law eliminates administrative detention from the list of administrative penalties. This draft Code is scheduled to be adopted already this year, 2014 and due to come into force as of 1 of July, 2015.

"[B2] With regard to alternative measures to imprisonment, the Committee welcomed the recent increase in the number of persons released on parole, but request additional information on:

(a) The number of persons convicted for administrative offences released on parole in the last 3 years;"

17. According to the current legislation, a person for the commitment of an administrative offence can be imposed with administrative detention for the term up to 30 days. Considering the short term of administrative detention, the persons convicted for administrative offences, according to the legislation, cannot be released on parole from the institution executing the detention.

"(b) Measures in place to guarantee the use of alternatives to imprisonment;".

18. The Criminal Code of Lithuania provides that a person who committed a crime can be imposed with alternatives to imprisonment, such as a fine, community service, restriction of liberty (Part 1 of article 42 of the Criminal Code). These alternatives to imprisonment are provided in the greater part of crime sanctions listed in the Criminal Code thus allowing to impose a prosecuted person not only with a sanction of imprisonment.

19. Furthermore, article 55 of the Criminal Code establishes a rule that a court shall generally impose a non-custodial sentence upon a person prosecuted for the first time for a minor or less serious premeditated crime. In the event of imposition of a sentence of imprisonment, the court must justify its decision.

20. It should be also noted that a person who commits a misdemeanour may not be imposed with the sentence of fixed-term or life imprisonment. For misdemeanours, a prosecuted person can only be imposed with community service, a fine, restriction of liberty or arrest (Part 2 of article 42 of the Criminal Code).

21. In addition, if a person is already imposed with imprisonment a court may suspend the imposed sentence. In case an imposed sentence was not suspended, such person may be released from the penitentiary on parole.

"(c) The criteria for eligibility for the different forms of alternatives to imprisonment."

A. The criteria for eligibility for the suspension of the imposed sentence

22. While taking a decision on the suspension of the imposed sentence, a court has to consider the conditions of the suspension and to the criteria set up in the Criminal Code:

- The degree of dangerousness of a committed criminal act
- The form and type of guilt

- The motives and objectives of the committed criminal act
- The stage of the criminal act
- The personality of the offender
- The form and type of participation of the person as an accomplice in the commission of the criminal act
- Mitigating and aggravating circumstances

23. In order to ensure adherence to these provisions, the Code of Criminal Procedure of Lithuania provides for the possibility to appeal against court's decisions to the higher court.

B. The criteria for eligibility for the release on parole

24. The release of a person serving a custodial sentence on parole may be applicable if:

- A convict has executed all measures provided in individual social-rehabilitation plan
- A convict has filed an application to Parole Commission
- The risk of criminal activity, the behaviour while serving a custodial sentence and other relevant circumstances underlie the presumption, that he/she would abide to law and would not re-offend
- A convict has served certain minimal term of custodial sentence

25. According to the Penal Enforcement Code of Lithuania detailed assessment of the risk of criminal activity, a convict's behaviour during the service of a custodial sentence and other relevant circumstances are elaborated in Methodological Recommendations on Preparation of Conclusions of Social Analysis, approved by the Minister of Justice of Lithuania on 14 June 2012, by order No. 1R-159. According to these recommendations, the following should be taken into consideration while assessing this condition for the release on parole:

- Factors influencing accused person's (convict's) risk of criminal activity, determined according to the OASys methodology, accused person's (convict's) criminal records
- Adherence to the convict's obligations and injunctions during the service of a sentence, attitude towards work and studying, violations of requirements of sentencing regime, imposed disciplinary measures and inducements, and the motives for their imposition, influence of behaviour during the service of a sentence to convict's criminal activity and the risk of criminal behaviour
- Convict's participation in the programmes for correction of behaviour (title, objectives and duration of the programme, the convict's engagement in the programme) and the influence of these programmes for the convict's criminogenic factors and the risk of criminal behaviour
- The fulfilment of convict's parents personal obligations, provided in the Civil Code of Lithuania
- Convict's cooperation (noncompliance or evasion) in the provision of information for the preparation of conclusions of social analysis
- Information on the implementation of recommendations delivered by the Parole Commission
- Other information additionally assessed during the evaluation of the risk of accused person's (convict's) criminal behaviour and had an influence on the outcome of the

assessment of the risk of criminal behaviour, accused person's (convict's) criminogenic factors and (or) on the conditions of the probation. This information depends on additional criminal behaviour risk assessment methodology applied by the person, who is preparing conclusions of social analysis, in order to determine accurately the criminogenic factors and select appropriate probation measures for the convict

26. Convict's criminal behaviour risk assessment is conducted in accordance with the scientifically adapted methodologies. The assessment is described in the conclusions of social analysis, which is submitted to the Parole Commission. After the evaluation of the content of the conclusions, the Commission takes a motivated decision on the release of the convict on parole from the penal institution. The decision of the Commission, together with the conclusions of the social analysis is submitted to the court for the confirmation of the decision of the Commission.

27. Any person, who notices any non-compliance with the established legal regulation by the institutions, which has taken a decision on release on parole, may appeal to the competent authorities to reconsider the decision (Part 6 of the article 164 of the Penal Enforcement Code, article 183 of the Penal Enforcement Code, and Part 7 of the article 360 of the Code of Criminal Procedure).